
FINAL RECOMMENDATIONS FOR THE INTERNATIONAL MARRIAGE BROKERS PROPOSAL April 5, 2006

Recommendation of the Joint Committee on Boards, Commissions, and Consumer Protection (Joint Committee)

ISSUE #1. Should California establish a licensing program for international marriage brokers?

Recommendation: *It has not been clearly established that there is sufficient consumer protection justification for this proposal and that this proposal meets the threshold for licensure (the potential for serious injury or death, or severe financial harm). Also, the proposal, as originally presented, is unclear with respect to enforcement by the Department of Consumer Affairs and how the required regulatory operations would be funded. It would further appear that many elements which call for professional licensure is lacking in the current proposal. The factors noted may instead suggest the regulation of a business practice rather than a professional licensing scheme.*

Comments: The proposal before the Joint Committee for consideration creates a new licensing and regulatory program for international marriage brokers (IMBs) in the Department of Consumer Affairs (DCA).

AB 634 (Lieber), would regulate how international marriage brokers conduct business in California, specifically requiring every IMB to be licensed by DCA in order to provide IMB services, as defined. The licensing program to be established by DCA regulations, would prohibit from licensure any IMB who has committed crimes of a violent or sexual nature, or crimes against children, and would make specific practice requirement for IMBs including providing specified basic rights information to each foreign recruit in the recruit's native language.

The bulk of current law regarding IMBs in the United States is contained in federal law. The federal Illegal Immigration Reform and Immigrant Responsibility Act of 1996 requires each "international matchmaking organization" doing business in the United States to give to each foreign recruit, in the recruit's native language, information approved by the Immigration and Naturalization Service, about immigration and the rights of battered spouses. Fines as high as \$20,000 may be imposed for violations of the federal law. The federal law also defines specific terms which are largely mirrored by the current regulatory proposal in AB 634.

Other states (Hawaii, Texas and Washington) have enacted legislation to regulate international marriage brokers that is similar to AB 634. The Texas law requires IMBs to provide recruits outside of the U. S. with the criminal and marital history of any client residing in the United States. Hawaii and Washington require that, upon request, marriage brokers must provide the recruit with the criminal history record information and the marital history information of the client residing in the state. All three states require the criminal background check to be obtained from the state's criminal justice department. The Washington law specifically exempts “traditional matchmaking organizations of a religious nature.” Texas also requires that the IMB provide certain information to the foreign recruit about his or her basic rights. Under Texas law, the IMB is subject to a penalty of up to \$20,000 for each violation.

In response to the Joint Committee’s *Regulatory Request Questionnaire* concerning professional judgments made by practitioners, the Author’s office stated that IMBs are not called upon to make “professional” judgments. There is no particular expertise or training involved in the IMB industry. Furthermore, the Questionnaire indicates that IMBs do not require a high degree of skill or knowledge in order to avoid harm and that standards of competence are not applicable to the proposed regulation. The Questionnaire further notes that measurable indicators of competent practice among IMBs according to objective standards are not applicable to the proposed regulation.

With regard to whether the occupation requires possession of knowledges, skills and abilities that are both teachable and testable, the Questionnaire indicates that generally, there is no particular knowledge, skill or abilities that are applicable, and the proposed regulations do not require training or testing of those in the occupation. Licensing is not based upon a showing of requisite skill or training, but rather on the absence of a criminal record.

It would appear that many of the elements which typically call for professional licensure may be lacking in the current regulatory proposal. The factors noted may instead suggest the regulation of a business practice rather than a professional licensing scheme.

The Questionnaire states that an independent cost analysis of the regulatory proposal is not available. Therefore the Author’s office derived cost estimates by reviewing various regulatory programs within the Department of Consumer Affairs. Assuming that there are an estimated 70 IMBs subject to licensure, and that each IMB would license two employees, it was concluded that an estimated 140 applicants would be subject to licensure and biennial renewal.

The Questionnaire estimates that the regulatory costs will be approximately equivalent to DCA’s Board of Guide Dogs for the Blind. The Department’s FY 2002-03 Annual Survey, indicates that the Board issued 103 Guide Dog licenses in that period. According to the Department of Finance, the expenditures for the last three years for that program were as follows:

2003-04	2004-05	2005-06
\$ 115,000	\$ 152,000	\$ 153,000

Accordingly, the estimated annual cost of this program is roughly \$140,000 per year.

However, it appears likely that the estimate of 140 licensees per year may be a high projection. Since the provisions of the bill define an international marriage broker as a person, corporation, partnership, sole proprietorship, or other legal entity that does business in California, it would seem likely that most international marriage brokers would become licensed as a business and not under individual licenses. Therefore the estimate that each of the 70 IMBs in California would license two employees appears to be optimistic. It would seem more likely that number of licensees would be closer to the actual number of IMBs in the state.

Based upon 70 licenses being issued and renewed on a biennial basis, licensing fees would have to be around \$2,000 per year (\$4,000 every two years) to support a \$140,000 annual budget.